IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 115/2002

Shri Nazario Pinto, r4esident of
Varca, Salcete, Goa. ..... Appellant.

V/s

Shri Joaquim Joao Fernandes,
resident of House No.608,
Dongorim, Majorda, Salcete, Goa. ..... Respondent.

Mr. M. S. Sonak and Mr. P. S. Rao, Advocates for the appellant.

Mr. A. Borkar, Advocate for the respondent.

CORAM : P.V. KAKADE, J.

Date of reserving the Judgment :
17.8.2006.

Date of pronouncing the Order :
10th October, 2006.

J U D G M E N T :

The appellant-defendant has preferred this appeal against the Judgment and Order passed by the Additional Civil Judge, Sr. Division, Margao for recovery of an amount of Rs.1,50,000/- with interest at the rate of 21 % from 21.11.1989 till actual payment.

2. Heard learned Counsel for both the parties. Perused the

record.

3. The record discloses that the appellant took a loan of Rs.1,50,000/- from the respondent vide promissory note dated 21.11.1989. The respondent filed the suit for recovery of the said amount with interest at the rate of 21 % per annum. The appellant-defendant contended that he never received the sum of Rs.1,50,000/- from the respondent, but had signed the said promissory note under duress. Decreeing the suit filed by the respondent, the trial Judge held that the appellant-defendant had failed to prove that the said promissory note was drawn without any consideration. It was also held that the appellant failed to rebut the presumption under Section 118(a) of the Negotiable Instrument Act.

4. On passing of the decree, the appeal came to be filed. In the course of hearing, Mr. Sonak, the learned Counsel for the appellant raised an issue to the effect that the suit was barred under the provisions of the Goa Money Lenders Act, 2001 which came into force with effect from 13.09.2001. It was exhaustively argued as to how the said transaction was marred under the provisions of the newly introduced Act of 2001.

The learned Counsel for the respondent urged that the Goa Money Lenders Act, 2001 is a prospective legislation and in no case it

could apply to a suit filed in the Court before the coming into force of this law i.e. since 13.09.2001.

5. However, without going into the merits of the matter, I must note that I was taken through the entire scheme of the new legislation. Section 2(u) of the said Act makes it clear that it applies to the suits for recovery of the loan amount prior or even after the day on which the said Act came into force. Besides this provision, there are several other provisions which may require consideration inspite of the fact that this aspect was neither pleaded nor issue was framed thereupon at the stage of trial. Therefore, taking into consideration all the far-reaching implications of the matter, I am of the considered view that it would be just and proper to refer the issue pertaining to the said aspect to the trial Court for the purpose of adjudication and after its decision, the matter should be referred back to this Court.

6. Hence, it is directed that the appeal is, hereby, remanded to the trial Court under Order 41, Rule 25 of the Code of Civil Procedure. The trial Court shall adjudicate the following issue :

Whether the suit is barred under the provisions of the Goa Money-Lenders Act, 2001 ?

The trial Court is directed to issue notices to both the parties and shall fix the date for hearing. The issue be heard on merits after giving opportunity to both sides to lead evidence, if any, and after recording the findings it should refer back to this Court within a period of six months from the date of receipt of writ of this Court.

P.V. KAKADE, J.

ssm.